

**MAY 20 2003**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON**  
**U.S. COURT OF APPEALS**

ANTHONY GAREWAL,

Petitioner,

v.

JOHN ASHCROFT, Attorney General,

Respondent.

No. 02-70798

INS No. A75-481-241

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted April 9, 2003\*\*  
Pasadena, California

Before: BEEZER, FERNANDEZ, and PAEZ, Circuit Judges.

Anthony Garewal appeals the Board of Immigration Appeals (“BIA”) ruling affirming the Immigration Judge’s (“IJ”) denial of his motion to reopen. Garewal

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

argues that the *in absentia* hearing was improper, that failure to rule on the motion to continue was improper, and that the denial of the motion to reopen was an abuse of discretion. We have jurisdiction and we deny Garewal's petition for review.

## I

Garewal argues that the *in absentia* hearing was improper because Garewal received notice of the hearing by mail rather than through personal service.

Personal service is not practicable when the respondent is not personally present before the IJ at the time the hearing docket is scheduled. Tedeeva v. INS, 88 F.3d 826, 827 (9th Cir. 1996). In such situations, notice by mail is proper. In re Grijalva, 21 I. & N. Dec. 27 at 35 (1995). Garewal was not present when notice for the missed hearing was issued. Notice by mail was sufficient.

## II

Garewal argues that the following constituted a violation of due process: the IJ's failure to consider the motion to continue and the failure to notify counsel of the status of the motion, the short preparation time, the denial of right to counsel, the failure to serve in person, and the failure to give notice of consequences for failing to appear. Garewal asked for a continuance because of an asserted time conflict. Absent additional evidence supporting the conflict, denial of the continuance motion was not a violation of due process. See Patel v. INS, 803 F.2d

804 (5th Cir. 1986) (explaining that denial of an unsubstantiated motion was not a violation of due process.) Garewal’s due process arguments concerning the short-notice and sequential denial of counsel arguments are not well taken. Garewal need only be provided with an “opportunity to meet [the notice].” Mathews v. Eldridge, 424 U.S. 319, 348 (1976). Garewal had notice of the hearing as evidenced by counsel’s motion that was filed prior to the hearing date. There is no evidence that Garewal required more time to prepare. Finally, Garewal was not denied counsel, rather, counsel failed to appear. Garewal’s due process arguments do not require us to set aside the BIA ruling.

### III

Garewal, claiming extraordinary circumstances under Singh v. INS, 295 F.3d 1037 (9th Cir. 2002) argues that his motion to reopen should have been granted. Extraordinary circumstances include serious illness of the alien or serious illness or death of the spouse, child, or parent of the alien, or other similar circumstances beyond the control of the alien, but not less compelling circumstances. 8 U.S.C. § 1229a(e)(1). Garewal’s claims fall outside of Singh because Garewal’s reasons are significantly less compelling. Garewal has not made the same strong showing of entitlement to relief found in Singh.

The petition for review is DENIED.